

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PATRICK B.

Claimant,

vs.

**REGIONAL CENTER OF ORANGE
COUNTY,**

Service Agency.

OAH Case No. 2009030780

DECISION

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter at New Orange Hills subacute facility, 5017 E. Chapman Ave., Orange, California, on May 18, 2009.

Caitlin Wybenga, Director of Social Services for New Orange Hills subacute facility, represented Patrick B. (Claimant)¹ who was present at the hearing.

Mary Kavli, Manager of Fair Hearings and Mediations, represented Regional Center of Orange County (RCOC or the service agency.)

Oral and documentary evidence was received and argument made. The record was closed and the case was submitted for decision on May 18, 2009.

ISSUES

The parties stipulated that the following issue is to be decided by the ALJ:

1. Shall the service agency be allowed to begin a transition plan for Rainbow Home Services?

¹ Claimant and his family are referred to by their initials or family titles to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a 46 year-old man, born September 23, 1962, who is a consumer of the RCOC.

2. Claimant filed a request for fair hearing on March 9, 2009, after RCOC proposed a transition plan regarding its funding of Rainbow Home Care. RCOC's plan is fully described in Exhibit 2. RCOC proposes a 15 percent decrease in funding for 6 weeks, for a total of 90 percent, and a 10 percent decrease in funding for the final week.

3. Previously, Claimant and his wife lived together in an apartment. Claimant received in-home Supported Living Services (SLS), which were provided by Maria, an employee of Rainbow Home Care (Rainbow).

4. On January 22, 2009, Claimant began residing at New Orange Hills, a subacute care facility. Prior to that, Claimant was hospitalized and then resided at Kindred, a subacute facility. During his hospitalization and thereafter, RCOC has continued to fund Rainbow because Maria offers emotional support to Claimant during this difficult time.

5. Presently, Claimant uses a ventilator at all times and receives his feeding through a G-tube. Claimant needs to be suctioned every two hours. These tasks must be performed by a licensed vocational nurse (LVN) or a licensed registered nurse (RN). Maria is not a LVN or a RN. However, Maria is a great comfort to Claimant and he desires that she continue providing emotional support to him.

6. It was established that the staff of New Orange Hills can care for all of Claimant's needs. Rainbow is unable to provide for all of Claimant's needs. It was also established that Claimant will not be able to leave New Orange Hills in the foreseeable future. As such, RCOC established that its proposed transition plan is reasonable.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. and Inst. Code, §§ 4500 et seq.)² A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-2.)

2. Where the service agency seeks to discontinue funding for a service previously agreed to by the service agency, the burden is on that service agency to demonstrate the

² All further statutory references are to the Welfare and Institutions Code.

service agency's decision is incorrect. In this case, RCOC had the burden of establishing that its proposed transition plan is appropriate. RCOC carried its burden. (Factual Findings 3-6.)

3. Section 4501 requires the state, through the regional centers, to provide an array of services and supports which is sufficiently complete to meet the needs and choices of each person with developmental disabilities. These are services and supports that will allow them, “regardless of age or degree of disability, and at each stage of life” to integrate “into the mainstream life of the community” and to “approximate the pattern of everyday living available to people without disabilities of the same age.” Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the individual’s developmental potential and are “directed toward the achievement of the most independent, productive and normal lives possible.” The regional centers will work with consumers and their families to secure “those services and supports that maximize opportunities and choices for living, working, learning and recreating in the community.” (§ 4502.)

4. Section 4646.5 defines the content of the planning process for the Individual Program Plan (IPP). It must include a statement of goals based on the consumer’s needs and time limited objectives for implementing the goals. The goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life and to develop competencies to help accomplish the goals. The IPP process must also include a schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the IPP goals and the identification of the providers of services.

5. Section 4646 states:

- (a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual. . . . It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program, reflect the preferences and choices of the consumer, *and reflect the cost-effective use of public resources. (Emphasis added.)*
- (b) The individualized program plan is developed through a process of individualized needs determination

6. Section 4648 describes what the regional center must do in order to achieve the stated objectives of the IPP. In securing the needed services and supports for a consumer the regional center must find services that are flexible and individually tailored to the consumer. By vendorization or contract the service agency may purchase services from any individual or agency the regional center and consumer determines will best accomplish all or

any part of the IPP.

7. Services provided must be cost-effective (§ 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (*See, e.g.*, §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) However, section 4659 specifies that it shall not be construed to impose an additional liability on the claimants with developmental disabilities nor to restrict eligibility for or deny services to a consumer who is unable to pay. To be sure, the obligations to other consumers are not controlling in the decision-making process, but a fair reading of the law is that a regional center is not required to meet a claimant's every possible need or desire, in part because it is obligated to meet the needs of many claimants.

8. There is nothing in the Lanterman Act which gives consumers the absolute right to pick a desired vendor. Claimant did not establish that Maria, or Rainbow, could adequately meet his needs. Claimant did also not establish that New Orange Hills can not meet all of his needs. (Factual Findings 3-6.)

9. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner (§§ 4640.7, subd. (b), § 4646, subd. (a)). A regional center is not required to provide all of the services which a client may require, but is required to "find innovative and economical methods of achieving the objectives" of the IPP (§ 4651). They are specifically directed not to fund duplicate services that are available through another publicly funded agency. This directive is often referred to as "supplanting generic resources." Where a service is available elsewhere, the regional center is required to "identify and pursue all possible sources of funding" (§ 4659, subd. (a)). However, if a service specified in a client's IPP is not provided by a generic agency, the regional center must fill the gap (i.e., fund the service) in order to meet the goals set forth in the IPP (§ 4648, subd. (a)(1); *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390)). Until such time as Claimant is capable of leaving New Orange Hills and residing with his wife, continued funding of SLS services is not warranted.

ORDER

Claimant Patrick B.'s appeal of the Regional Center of Orange County's determination that funding for Rainbow Home Services should be phased out is denied.

IT IS SO ORDERED.

DATED: May 20, 2009,

_____/s/_____
CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5, subdivision (b)(2). Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.